

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING**

**April 25, 2013**

- I. **CALL TO ORDER** – The meeting was called to order at 1:33 p.m. in the 3<sup>rd</sup> floor Conference Room, Phoenix Building, 101 East Vine Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Patrick Brewer (arrived at 1:37 p.m.); Mike Cravens; Karen Mundy; Mike Owens; Frank Penn; Carolyn Plumlee; Lynn Roche-Phillips; and Bill Wilson. Absent were Will Berkley and Carla Blanton.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; Hillard Newman, Division of Engineering; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 8-0 (Berkley, Blanton, and Brewer absent) to approve the minutes of the March 14, 2013, March 28, 2013, and April 11, 2013, Planning Commission meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **MMA MANAGEMENT, LLC, ZONING MAP AMENDMENT & HOUGHAM PROPERTY, LOT 1, ZONING DEVELOPMENT PLAN**

- a. MARC 2013-8: MMA MANAGEMENT, LLC (5/5/13)\* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Heavy Industrial (I-2) zone (with zoning restrictions), for 20.0 net (22.71 gross) acres, for property located at 1100 Alexandria Drive (a portion of). A conditional use permit is also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Light Industrial (LI) future land use for the subject property. The petitioner has requested a Heavy Industrial (I-2) zone, with conditional zoning restrictions, in order to establish a vehicle recycling facility. A conditional use permit has also been requested as part of this zone change.

The Zoning Committee made **no recommendation** on this request.

The Staff Recommended: **Disapproval**, for the following reasons:

1. Although proposed to be significantly restricted, the requested Heavy Industrial (I-2) zone is not in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Land Use Element of the Comprehensive Plan recommends Light Industrial (LI) future land use for the subject property. According to the text of the Plan, this is defined as "those establishments that assemble finished or semi-finished materials, food preparation, publishing, communication, construction materials, or any establishment or repair services that may present a moderate nuisance to adjacent properties."
  - b. No assembly of finished or semi-finished materials, food preparation, publishing, communications industry, construction materials or repair service is proposed for the subject property.
  - c. Heavy Industrial (HI) uses, according to the text of the Plan, have a high (rather than moderate) potential for nuisance factors such as noise, odors or vibrations, and are for uses that are somewhat unique or rare, such as "a mining establishment, power production facility, a stadium, or a waste disposal facility." The proposed use is unique; and, except for a similar facility located on 7<sup>th</sup> Street (an apparent non-conforming use dating back at least 50 years), only 25 or so are operated in the United States by the applicant.
2. The existing I-1 zone is appropriate for the subject property. It is the same as that found in the rest of the area and would permit uses in keeping with the 2007 Plan's future land use recommendation. Such uses would likely result in more employment (on a per acre basis) than that proposed by the applicant for the subject parcel.
3. There have been no unanticipated changes of an economic, social or physical nature that have occurred in this area since the 2007 Plan was adopted.

b. REQUESTED CONDITIONAL USES

1. Yard for storage of dismantled or partially dismantled automobiles
2. Junk Yard

Should the Planning Commission recommend Approval of the requested I-2 zone change, the Staff Recommends: **Approval**, for the following reasons:

1. A yard for storage of dismantled or partially dismantled automobiles and/or a junk yard, which are the two most similar uses to the applicant's proposed vehicular recycling center, should not adversely affect the subject or surrounding properties. The amount and type of traffic anticipated with this use should be able to be handled with the extension of

---

\* - Denotes date by which Commission must either approve or disapprove request.

Enterprise Court connecting to the adjacent business park.

2. All necessary public services and facilities, such as police and fire protection, are available and adequate for the proposed use.

This recommendation is made subject to the following conditions:

1. Provided the subject property is rezoned I-2 by the Urban County Council; otherwise, any Planning Commission action of approval is null and void.
2. The property shall be developed according to the submitted application and Zoning Development Plan, or as further amended by the Planning Commission.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction, and prior to occupancy of the facilities.
4. The accessory parking lots and driveways shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. The final design of the parking lots, access drives and internal parking lot circulation shall be subject to review and approval by the Division of Traffic Engineering.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The approval of a junk yard at this location is to be limited to the processing of automobiles only, and would not apply to other materials, such as used lumber and building salvage, that are within the definition of a "junk yard" found in Article 1-11 of the Zoning Ordinance.
8. Prior to approval of a final development plan, a qualified environmental professional will make a recommendation on the type of surface that should be used in the vehicle storage area and provide information on possible storm drainage impacts to the spring located to the south of the subject site.

Should the Planning Commission recommend Disapproval of the requested I-2 zone change, the Staff Recommends: **Disapproval**, for the following reasons:

1. Under Article 6-4(c) of the Zoning Ordinance, the Planning Commission may only hear conditional uses and variances when filed with an associated zone change. Thus, unlike the associated zoning development plan, the Commission may only consider this matter within 90 days of its filing.
2. Disapproval of the conditional use does not prohibit the applicant from filing a conditional use application with the Board of Adjustment, should the Urban County Council approve the requested I-2 zoning of the subject property.

- c. ZDP 2013-21: HOUGHAM PROPERTY, LOT 1 (5/5/13)\* - located at 1100 Alexandria Drive. **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property I-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of information regarding environmentally sensitive areas.
7. Resolve timing of the construction of the detention basin at the rear of the property.
8. Discuss proposed access and the timing of the construction and dedication of Enterprise Drive.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the petitioner would like to request a one-month postponement of this item in order to have more time to meet with parties that are concerned about their proposal. He added that the concerned parties were informed of the petitioner's intent to request postponement, and they were in agreement.

Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 8-0 (Berkley, Blanton, and Brewer absent) to postpone MARC 2013-8 to the May 23, 2013, Planning Commission meeting.

2. DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (6/2/13)\* - located at 1500 Russell Cave Road & 281 and 285 New Circle Road. (Council District 1) **(Vision Engineering)**

Note: The Planning Commission postponed this plan at their April 11, 2013, meeting. The purpose of this amendment is to revise the development on Lot 1 and include Lot 2 in the development.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the proposed access to Russell Cave Road.

---

\* - Denotes date by which Commission must either approve or disapprove request.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Kentucky Transportation Cabinet's approval of access to Russell Cave Road.
10. Clarify restaurant seating to include outdoor patio area (and any related off-street parking).
11. Correct, delete and consolidate notes #9 - #13 to the approval of the Urban Forester.
12. Discuss proposed access to Russell Cave Road.
13. Discuss Russell Cave Road cross-section right-of-way width (80' Final Record Plat).
14. Discuss internal access and connectivity.

Petitioner Representation: Matt Carter, Vision Engineering, was present representing the petitioner. He said that the petitioner has been working with the staff to draft some language to be added to the plan with regard to timing of the closure of one of the access points to Russell Cave Road. They would like to request a two-week postponement in order to continue to work on those issues.

Action: A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 8-0 (Berkley, Blanton, and Brewer absent) to postpone DP 2013-29 to the May 9, 2013, Planning Commission meeting.

**3. ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM** - amendments to the Zoning Ordinance and Land Subdivision Regulations to account for changes required by the new LFUCG Capacity Assurance Program.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Text underlined indicates an addition, while ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance and Land Subdivision Regulations.

**ZONING ORDINANCE**

5-2(h) SANITARY SEWER CAPACITY PERMIT – No development shall commence without a permit from the Division of Water Quality in conformance with the LFUCG Capacity Assurance Program documenting that adequate sanitary sewer service is available.

5-2(i) OTHER PERMITS - Additional permits may be required by the responsible Divisions to enforce the provisions of this Ordinance.

21-4 DEVELOPMENT PLAN PROCEDURES - The following shall be the procedure for Planning Commission consideration of any development plan.

21-4(a) ON-SITE MEETING - Prior to the submission of a development plan, the owner/developer shall contact the Urban Forester, who will determine if an on-site meeting with the developer's design professional and/or other pertinent Urban County Government staff is necessary.

21-4(b) FILING - To formally request Planning Commission action on the development plan, the developer shall file a completed application form (including documentation with any Final Development Plan that adequate sanitary sewer treatment capacity and service exists or has been reserved for the subject property), filing fee and copies of the plans as required by the Commission's adopted filing and fee schedules with the Division of Planning. The Division of Planning shall make copies of the plan available to all other concerned agencies.

**LAND SUBDIVISION REGULATIONS**

4-5 IMPROVEMENT PLAN PROCEDURE - All improvement plans shall be prepared and filed in accordance with the following procedure:

4-5(a) INFRASTRUCTURE DEVELOPMENT AGREEMENT - Prior to commencing the engineering design for the public infrastructure of any major subdivision, the project engineer, developer and the Lexington-Fayette Urban County Government, acting by and through its Urban County Engineer, shall enter into an infrastructure development agreement in a form and containing the provisions contained in the Procedures Manual. A new infrastructure development agreement

---

\* - Denotes date by which Commission must either approve or disapprove request.

shall be required in the event the developer of the property is changed to another development entity, or in the event the private agreement for infrastructure development services between the developer and the project engineer are terminated. All infrastructure development agreements shall provide that the subject development has sanitary sewer capacity in compliance with the requirements of Section 6-2 of these regulations.

6-2 ADEQUATE PUBLIC FACILITY STANDARDS - In addition to the specific design standards and requirements contained herein, the following minimum site conditions shall exist prior to Planning Commission approval of any subdivision, whether such facilities are provided by the developer, a private utility, or the Urban County Government.

6-2(a) PUBLIC SANITARY SEWERS - Shall be provided as follows:

(1) TREATMENT PLANT CAPACITY - The projected amount of sewage effluent generated by the proposed development shall not cause the allocated capacity of the treatment plant that will serve the projected development to be exceeded, nor will it cause any violation of Federal, State or local water quality laws or standards in effect at the time of development.

(2) SEWAGE COLLECTION SYSTEM - The proposed development shall be served by a sewer collection line of sufficient size and capacity to accommodate the effluent projected to be generated by the proposed development in addition to the demands placed on the system by existing development, without exceeding the design capacity of the sewer line and/or sewage pump stations.

For purposes of making this determination, "served" means that there is a sewage collection line in the public way on which the proposed development will have frontage or there is a sanitary sewage collection line otherwise available to serve ~~serving~~ the proposed development; or the developer will finance and will, at the appropriate time, execute a bond or other surety to guarantee the extension, in accordance with the 201 Master Sewer Plan and any sanitary sewer guidelines established by the Urban County Council, of a sewer line to serve the proposed development; or that construction of the sewer line is scheduled for completion within one year.

(3) DOCUMENTATION – Not later than at the time of execution of the Development Agreement, the developer shall provide written documentation from the Division of Water Quality that adequate sanitary sewer treatment plant capacity exists for the proposed development and that the proposed development is served by a sewer collection line of sufficient size and capacity as required by the LFUCG Capacity Assurance Program.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. These text amendments will put the Zoning Ordinance and Land Subdivision Regulations into better alignment with the provisions of the Capacity Assurance Program – an integral part of the Consent Decree with the EPA.
2. Some of these changes will eliminate the need for the Commission to spend their time reviewing plans, or otherwise reapplying plans, that have not originally qualified for sanitary sewer service or treatment capacity.

Petitioner Representation: Chris King, Director, was pleased to be present to represent the petitioner. He said that the LFUCG Capacity Assurance Program team would like to request a two-week postponement of this item in order allow for the circulation of a new draft of the larger CAP Ordinance. That time would also provide an opportunity for the team to meet with stakeholders, discuss the new draft with them, and make any necessary tweaks. Mr. King noted that the bulk of that work should be done prior to the Commission's Committee meetings next week.

Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 8-0 (Berkley, Blanton, and Brewer absent) to postpone ZOTA 2013-1 & SRA 2013-1 to the May 9, 2013, Planning Commission meeting.

Note: Mr. Brewer arrived at this time.

**IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, April 4, 2013, at 8:30 a.m. The meeting was attended by Commission members: Mike Owens, Carolyn Plumlee, Frank Penn and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Chris Taylor, Denice Bullock, Cheryl Gallt, Rob Hammons and Joey David, as well as Andrew Grunwald, Division of Engineering, Greg Lengal, Division of Fire and Ed Gardner, Department of Law. The Committee made recommendations on plans as noted.

#### General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

**A. SUBDIVISION PLAN**

- a. PLAN 2013-28F: C. CAROL HALEY FARM (AMD) (6/2/13)\* - located at 3705 Haley Road.  
(Council District 12)

(2020 Land Surveying)

Note: The Planning Commission postponed this plat at their April 11, 2013, meeting. This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to subdivide one lot into a 40-acre and an 80+-acre lot, and to clarify the existing 50' road easement.

The Subdivision Committee Recommended: Postponement. It is unclear as to how the new 40-acre lot would comply with minimum lot frontage requirements.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of street cross-sections for access easement and Interstate 64 right-of-way information from previous plan.
8. Correct owner's certification in relation to sanitary sewer.
9. Addition of note for maintenance responsibility for 50' access easement.
10. Addition of notes from previous plan, as applicable.
11. Addition of 300' building setback line from I-64.
12. Denote Health Department approval of septic system(s) prior to certification.
13. Denote buildable and non-buildable areas per Article 6-4(j)(4)(b).
14. Provided the Planning Commission grants a waiver to Article 6-4 (c) of the Land Subdivision Regulations.

Subdivision Plan Presentation: Ms. Gallt presented this subdivision plat, the purpose of which is to subdivide an existing agricultural property into two lots: one 40 acres in size, and the other approximately 80 acres in size. She said that the applicant had submitted a revised plan following the Subdivision Committee meeting. Based on that submission, the staff is now recommending approval of this request, subject to the following revised conditions:

The Staff recommends Approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
- ~~7. Addition of street cross-sections for access easement and Interstate 64 right-of-way information from previous plan.~~
- ~~7.8.~~ Correct owner's certification in relation to sanitary sewer.
- ~~8.9.~~ Addition of "10' blacktop" note for maintenance responsibility for existing 50' access easement.
- ~~9.10.~~ Addition of notes from previous plan, as applicable.
- ~~11.~~ Addition of 300' building setback line from I-64.
- ~~10.12.~~ Denote Health Department approval of septic system(s) prior to certification.
- ~~11.13.~~ Denote buildable and non-buildable areas per Article 6-4(j)(4)(b).
- ~~12.14.~~ Provided the Planning Commission grants a waiver to Article 6-4 (c) of the Land Subdivision Regulations.

Ms. Gallt stated that the first six conditions for this revision refer to typical sign-offs, and conditions #7-11 can be considered as "clean-ups." With regard to condition #10, she explained that the applicant is proposing to construct an additional residence on the subject property, so Health Department approval of septic systems will be required. Condition #12 refers to a requested waiver to Article 6-4(c) of the Subdivision Regulations, which would be presented by Mr. Martin.

Waiver Report Presentation: Mr. Martin presented the staff report on the requested waiver of the Land Subdivision Regulations requirements for road frontage, briefly orienting the Commission to the location of the subject property on Haley Road. Using a rendered copy of the plat, he noted the proposed configuration of the two lots; the existing residence; and the access easement in question, which was created in 1977-78. Mr. Martin noted that the staff had distributed to the Commission members copies of that original plat, which created an access easement along the road frontage to serve a 10-acre tract to the east of the subject property. That easement currently reaches both of the proposed lots, so it could be used to serve as access for the new 40-acre lot as well. Mr. Martin also noted the large floodplain area on the subject property, as well as the location of a 150-foot electric transmission easement and 50-foot Columbia Gas transmission easement.

\* - Denotes date by which Commission must either approve or disapprove request.

Mr. Martin stated that the staff had reviewed this waiver request and discussed it with the relevant LFUCG Divisions, and they were now recommending approval of the waiver to allow the new 40-acre lot to exist without access to Haley Road, being served instead by the existing access easement, for the following reasons:

1. Strict enforcement of the Subdivision Regulations would constitute a hardship for the applicant due to the topographical constraints on the property.
2. Provided that the "10' blacktop" surface exists, granting the waiver of the Subdivision Regulations will not negatively impact public health and safety.

The staff's recommendation of approval is made subject to the following condition:

1. Document existence and condition of "10' blacktop" within existing 50' access easement to the edge of the new lot.

Mr. Martin noted that the original plat specified that the access easement was 50' wide, with 10' of blacktop; the staff believes that that blacktop is very important in this instance, as it provides for proper emergency vehicle access to the subject property.

Commission Questions: Mr. Penn asked if the access easement was dedicated, and if it would be included in the deed for the subject property. Mr. Martin answered that it was a dedicated access easement, and that it is depicted on the plat. Mr. Penn asked if access would be granted to future purchasers of the property through the transfer of the deed. Mr. Martin responded in the affirmative.

Mr. Owens asked, with regard to the staff condition recommended for granting the waiver, if the entire length of the access easement should be paved. Mr. Martin answered that the entire length of the easement should be paved in order to serve the new 40-acre tract. Mr. Owens asked if condition #8 for the approval of the plan would still be needed. Mr. Martin responded that, should the Commission approve the waiver request, that condition should cover the issue addressed by condition #8.

Mr. Penn asked if the owners of both of the newly-created parcels would be responsible for maintenance of the access easement. Mr. Martin replied that an access easement is normally maintained by the party it benefits, which, in this instance, would be the owner of the 40-acre tract. Mr. Penn stated that he is concerned about creating an isolated tract, with its sole access via an easement, because "assumptions could be made about the road maintenance." He added that he believes that the maintenance responsibility should be made very clear as part of this subdivision process. Mr. Martin stated that maintenance could be clarified via a statement on the plat, which would then be established via the recording of the plat.

Ms. Beatty asked if the owner of the 80-acre tract would also use the access easement. Mr. Martin answered that that owner could use the easement, since it would cross their property. Ms. Beatty asked if Mr. Penn's concern was that a maintenance agreement would need to be established between the owners of the two tracts, or that the owner of the 40-acre tract would need to take sole responsibility for the maintenance. Mr. Martin responded the access easement was created to serve the 10-acre tract that was not part of this plat. Therefore, a third-party agreement could be created for maintenance of the easement.

Representation: Justin Drury, 2020 Land Surveying, was present representing the applicant. With regard to Mr. Penn's questions about the access easement, he explained that there is an existing private street and access easement note on the plat. He said that the access easement was originally constructed with a solid blacktop base, so providing blacktop for the entire length, as required by the staff's condition for approval of the waiver, should not be an issue.

Mr. Drury stated that he had posted the required sign on the property, and he submitted the necessary affidavit and photograph of the posted sign.

Commission Questions: Mr. Owens asked Mr. Drury to note, for the record, the language listed on the plat with regard to the access easement. Mr. Drury read the following from the plat: "The owners of this property and any successors in title hereby agree to assume full responsibility for any construction maintenance, reconstruction, snow removal, cleaning and other needs related to private streets (access easements) to be designated on this plan, and do hereby fully relieve the Urban County Government from any such responsibility." Mr. Drury noted that that language did not specify which property owner would be responsible for maintaining the access easement, but said that such language could be included if the Commission so chose.

Mr. Penn asked who would be responsible for maintaining the access easement. Mr. Drury responded that he could add a maintenance note to the plat, if the Commission so chose.

Ms. Mundy said that, since the access agreement reflected a private contract, the maintenance details should be included in the sale contract at the time of the sale of the 40-acre parcel. Mr. Drury agreed that that could be one means of resolving

---

\* - Denotes date by which Commission must either approve or disapprove request.

the issue of maintenance of the easement. He added that the applicant is proposing to sell the 40-acre parcel to his son for the construction of a new residence there, noting that the existing structure on the property is currently vacant. Ms. Mundy asked what easement requirements exist for the 10-acre tract. Mr. Drury answered that the easement was created in favor of the 10-acre tract when the easement area was originally designated from the former farm property. At that time, the maintenance of the road fell solely upon the owner of the 10-acre parcel, since that was the party that benefitted from the creation of the easement. Ms. Mundy stated that it seemed that the Planning Commission should have little involvement in the issue of maintenance of the easement, since it is an agreement between the property owners.

Mr. Penn opined that the question of which property owner would be required to maintain the access easement should be resolved at this time, rather than further along in the process. He said that, even though the applicant is proposing to sell the 40-acre tract to a family member, there is no guarantee that the property will not be sold to someone outside the family in the future. Mr. Penn added that maintenance of access easements in rural areas was a major problem for some of the surrounding counties, and he does not want it to become an issue in Lexington-Fayette County.

Ms. Plumlee agreed with Mr. Penn that the issue of maintenance of the easement should be addressed at this time, rather than 20 years in the future, when it will be much more difficult to resolve.

Mr. Drury stated that his client would be agreeable to adding an easement maintenance note to the plat, but he would need to defer to the staff with regard to the verbiage of the note.

Mr. Wilson asked if the Planning Commission has jurisdiction to require a maintenance note on the plat, since the easement is private. Mr. Penn stated that he believed that a note should be added to the plat to indicate that the easement must be maintained by the owner of the property who benefits from it.

Staff Comment: Mr. Martin stated that the staff would be agreeable to placing such a condition on the plat, so that the property owners could then work out the issue between themselves. He suggested the following language for a new condition #13, should the Commission choose to require a note for the maintenance of the easement: "Clarify maintenance responsibility of the access easement."

Commission Questions: Mr. Wilson stated that he was still unclear with regard to how the Planning Commission can require the addition of a maintenance note, when the maintenance agreement would be decided between the property owners. Mr. Martin responded that the easement cannot be altered unless the Planning Commission authorizes it via the approval of an amended plat for the property. He added that the maintenance note that is currently on the plat denotes that the signees accept the responsibility for the easement.

Ms. Beatty asked if the requested waiver was the reason for this discussion about maintenance responsibility. Mr. Martin agreed, explaining that the applicant has requested a waiver in order to provide access to the 40-acre tract via the access easement, rather than the more typical street frontage required by the Subdivision Regulations.

Action: A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve PLAN 2013-28F, subject to the 12 conditions as listed in the revised staff recommendation; adding a new condition #13 to read as Mr. Martin indicated earlier; and granting the requested waiver of the Land Subdivision Regulations.

**V. ZONING ITEMS** - The Zoning Committee met on Thursday, April 4, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

**A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

**B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)

---

\* - Denotes date by which Commission must either approve or disapprove request.

- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **PATRICIA DONOGHUE ZONING MAP AMENDMENT & ETHINGTON AND ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD.) ZONING DEVELOPMENT PLAN**

- a. **MARV 2013-3: PATRICIA DONOGHUE (AMD.) (4/25/13)\*** - an amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 0.95 net (1.28 gross) acres, for property located at 4145 Harrodsburg Road (a portion of). Dimensional variances are also requested with this zone change.

**LAND USE PLAN AND PROPOSED USE**

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes to remove the existing residence and construct three townhouse units, for a density of 3.16 dwelling units per net acre.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommended: **Approval**, for the following reason:

1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0-5 dwelling units per net acre. This would suggest a maximum of 4 dwelling units for the subject property.
  - b. The applicant proposes 3 townhouse dwelling units on the 0.95-acre subject property, at an overall residential density of 3.16 units per net acre.
2. This recommendation is made subject to approval and certification of **ZDP 2013-15: Ethington & Ethington Property (Bowman House) (Amd.)**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
  - a. Existing trees shall be preserved for the area within thirty (30) feet of the southern and eastern property lines in the R-1T zone.
  - b. Within these areas, only damaged or diseased trees may be removed, but only with the permission of the Urban Forester. If removed, they shall be replaced in equal number to preserve the existing tree canopy and buffer.

These conditional zoning restrictions are appropriate and necessary for the following reasons:

1. Preservation of the existing tree canopy located adjacent to the Ethington & Ethington property will be ensured.
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

b. **REQUESTED VARIANCES**

1. Reduce the required rear setback from 25 feet to 10 feet along the northwestern edge of the property.
2. Reduce the required side setback from 25 feet to 15 feet along the southwestern edge of the property for Lot 8.
3. Reduce the required front setback from 30 feet to 10 feet for Lot 9.

The Zoning Committee Recommended: **Approval of the requested variances**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. In particular, granting the requested front yard variance for Lot 9 will allow the character to be consistent between the single family home and the surrounding townhouses. Adequate vegetative buffers will remain to mitigate the need for an increased setback along the northwestern and southwestern property lines.
- b. Granting these requests will not allow an unreasonable circumvention of the Zoning Ordinance, but rather a design response to the existing site characteristics, such as the existing tree line along the shared property boundary.

---

\* - Denotes date by which Commission must either approve or disapprove request.



- c. The special circumstances that apply to the subject property that serve to justify the variances are the existing trees and the fact that the one detached unit will be of similar size and layout as the surrounding townhomes, except that it will not share a common wall with another dwelling unit.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would not likely lead to a better design of the property. Approval of the requested variances will actually lessen the impact on the adjoining agricultural property by eliminating the approved driveways which were originally proposed at the rear of the new structures.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance, as both the subject and surrounding properties are currently vacant in this vicinity.

This recommendation of approval is made subject to the following conditions:

- 1. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval of this variance is null and void.
  - 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
  - 3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2013-15: ETHINGTON & ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD) (4/25/13)\* - located at 4145 Harrodsburg Road.  
**(Wheat & Ladenburger)**

Note: The Planning Commission postponed this plan at their February 28 and March 28, 2013, meetings. The purpose of this amendment is to rezone the property and add six additional townhouse units.

The Subdivision Committee Recommended: Postponement. There were questions regarding the detached dwelling unit proposed in the R-1T zone.

Should this plan be approved, the following requirements should be considered:

- 1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
- 2. Urban County Traffic Engineer's approval of street cross-sections and access.
- 3. Building Inspection's approval of landscaping and landscape buffers.
- 4. Addressing Office's approval of street names and addresses.
- 5. Urban Forester's approval of tree preservation plan.
- 6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
- 7. Division of Waste Management's approval of refuse collection.
- 8. Correct notes #6 and #7.
- 9. Indicate that this is an amended plan in the title block.
- 10. Add purpose of amendment note.
- 11. Denote variances approved by the Commission, as necessary, prior to plan certification.
- 12. Clarify existing and provided tree canopy information and calculations.
- 13. Addition of conditional zoning restrictions, as necessary.
- 14. Discuss proposed driveway widths.
- 15. Discuss proposed screening along R-1D property line.
- 16. Discuss sidewalks and possible need for waiver.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property on the north side of Harrodsburg Road, across from the Higbee Mill Reserve apartment complex and near Stedman Drive and Palomar Boulevard. To the west of the subject property is the Palomar subdivision, with an existing A-U zone to the south and west, and R-4 zoning across Harrodsburg Road for the apartment complex. With the exception of the agricultural tract, all of the zoning in the immediate vicinity of the property is residential.

Ms. Wade stated that the subject property is approximately one acre in size, and it was part of a 2007 zone change to R-1D and R-1T for the larger three-acre parcel. At that time, part of the property was rezoned to R-1T; that existing R-1T area flanks the subject parcel to the west and north. The remainder of the property was rezoned to R-1D at that time in order to maintain an existing residence on the property. Since that time, the subject property has not been developed, and now the petitioner is proposing to rezone a majority of the R-1D portion to R-1T in order to construct a residential development made up of mostly townhouses. Ms. Wade said that the petitioner is proposing a total of 19 townhouses and one single-family residence for the entire three-acre tract. On the subject property, the petitioner is proposing to construct three new townhouses, with access from Syringa Drive, rather than from Harrodsburg Road. Displaying an aerial photograph of the subject property, Ms. Wade noted the location of the residential structure on the property, with its driveway access to Harrodsburg Road, and the adjoining A-U parcel.

---

\* - Denotes date by which Commission must either approve or disapprove request.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Low Density Residential land use, or 0 – 5 dwelling units per acre, for the subject property. The petitioner's proposed three units on the one-acre property would result in a residential density of 3.16 units per acre, which does fall within the recommended range. Therefore, the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Ms. Wade said that there are existing conditional zoning restrictions along the boundary of the Ethington property, which is zoned A-U, as well as along the southern property line. With the proposed rezoning to R-1T, some of that conditional zoning restriction language would be removed. The staff, however, would like to ensure that those restrictions are maintained, so they are proposing two new conditional zoning restrictions, as listed in the staff report and on the agenda. Those restrictions are proposed to protect the view from Harrodsburg Road of the existing trees on the property, and protect the trees along the Ethington property line.

Development Plan Presentation: Mr. Martin presented the corollary amended preliminary subdivision plan and zoning development plan, further orienting the Commission to the location of the subject property. Using a rendered copy of the development plan, he noted the location of the proposed extension of Syringa Drive, which would terminate in a cul-de-sac similar to the layout depicted on the previously approved plan for the property. This amended plan also depicts the proposed 19 townhouses and one single-family residence. Mr. Martin also noted the location of a large, park-like area on the property, where most of the existing significant trees are located. The petitioner is also proposing an area of stormwater detention, and private open space to the rear of the townhouse units.

Waiver Presentation: Mr. Martin stated that the petitioner has also requested a waiver of the Land Subdivision Regulations, to eliminate the requirement for sidewalks near the cul-de-sac area.

Mr. Martin stated that the staff is recommending approval of the development plan and waiver request, subject to the following 16 revised conditions, which were distributed to the Commission members prior to the start of the hearing:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct notes #6 and #7.
9. Indicate that this is an amended plan in the title block.
10. Add purpose of amendment note.
11. Denote variances approved by the Commission, as necessary, prior to plan certification.
12. Clarify existing and provided tree canopy information and calculations.
13. Addition of conditional zoning restrictions, ~~as necessary.~~
14. ~~Discuss proposed driveway widths~~ Revise driveways on Lots 12, 19 & 20 to meet Article 1-11 and Article 16-4(b)(2) requirement.
15. ~~Discuss proposed screening along R-1D property line~~ Revise Unit 1 to meet required building setback requirements.
16. ~~Discuss sidewalks and possible need for~~ Provided the Planning Commission grants the requested waiver to Article 6-8(n)(1).

Mr. Martin said that the staff would like for the petitioner to clarify the tree canopy calculation, since there are a number of significant trees on the property. Condition #14 relates to a considerable discussion at the Subdivision Committee meeting about the large driveway areas proposed for the townhouse units. Condition #15 would require a slight adjustment to one of the building setbacks in order to meet the Zoning Ordinance requirements.

With regard to condition #15, Mr. Martin stated that one of the requested waivers to the Land Subdivision Regulations would allow the petitioner to construct the sidewalks at a width of four feet, to the back of the curb, in most of the proposed development. Typically, sidewalks constructed to the back of the curb are six feet in width.

Mr. Martin said that the petitioner is also requesting waivers to the sidewalk requirements near the heavily treed open space area in order to help reduce the impacts of construction on the existing trees. The petitioner is proposing to construct trails to serve as a pedestrian system in that area. In addition, the petitioner is requesting a waiver to the sidewalk requirements on the northern side of the property, in order to minimize the impact of sidewalk construction on the adjoining property. Mr. Martin stated that the staff is recommending approval of one portion of the waiver request, and disapproval of the other portion, for the following reasons:

---

\* - Denotes date by which Commission must either approve or disapprove request.

The Staff Recommended: **Approval of a portion of the requested waiver (Josie Trace)**, for the following reasons:

1. Not granting the waiver would constitute an exceptional hardship for the applicant due the significant trees on the property, the topography and small area of the proposed development.
2. Granting the waiver will not negatively impact public health and safety, as the applicant is constructing a pedestrian system consistent with the intent of the Land Subdivision Regulations.

This recommendation is subject to the following condition:

- a. Prior to the issuance of a building permit, the pedestrian system will be designed to the approval of the Pedestrian Planner, the Division of Traffic Engineering and the Division of Engineering.

The Staff Recommended: **Disapproval of a portion of the requested waiver (Syringa Court)**, for the following reasons:

1. Completion of the sidewalk around the Syringa Court cul-de-sac does not constitute a hardship for the applicant.
2. Not constructing the entire sidewalk will have a negative impact on public safety by creating a gap in the pedestrian system, forcing pedestrians into the street, and creates ADA compliance issues contrary to the intent of the Land Subdivision Regulations.

With regard to the staff's disapproval recommendation for the Syringa Court portion of the waiver request, Mr. Martin stated that the staff could find no compelling reason for granting the waiver, and they were concerned that lack of a sidewalk in that area could cause issues with ADA compliance.

Mr. Martin stated that the staff is recommending approval of this development plan, subject to the revised conditions as listed above, and of the Josie Trace portion of the waiver request.

Mr. Cravens asked if the petitioner had provided details about the construction of the sidewalk against the curb. Mr. Martin answered that those details were provided in the street cross-section. Mr. Cravens asked if the sidewalk is proposed to be flat, or part of a driveway apron. Mr. Martin responded that he believed that the sidewalk would be flat, but the petitioner should be able to fully address that inquiry.

Variance Report Presentation: Mr. Emmons stated that the petitioner had requested three dimensional variances to the setbacks along with this rezoning request. Referring to an aerial photograph of the property, he explained that two of the three variances are requested along the rear property, where the existing tree line is located. In considering this request, the staff reviewed the approved development plan for the property, noting that, although the proposed structures met the building line requirements, they seemed to have a greater impact to the property line shared with the adjoining agricultural property due to the large expanse of driveway for each unit.

Mr. Emmons stated that the first requested variance is to reduce the setback from 25' to 10' along the rear property line. The requested R-1T zone typically has a 10' rear yard setback requirement; but, because the adjacent property is zoned A-U, Article 15 requires that the structures meet the 25' agricultural setback.

Mr. Emmons said that the second variance refers to the side property line, where the petitioner is requesting a variance from 25' to 15' for the side yard of the end townhouse unit. He noted that the typical side yard requirement in the R-1T zone is six feet, but that dimension must also adhere to the 25' agricultural setback. The staff noted that the impact of locating the structures closer to the property line will be mitigated somewhat in this area due to the existing tree line and the relocation of a proposed drive aisle.

The final requested variance, Mr. Emmons explained, is for the front yard setback of the remaining R-1D lot. The petitioner is proposing to construct a single-family home on that lot, in the same architectural style as the surrounding townhouse units, so that they form a cohesive development. The R-1D zone has a 30' front yard requirement; the petitioner is requesting to vary that to 10' so that that structure will have the same setback as the surrounding townhouses. Mr. Emmons said that the staff determined that granting this variance would have less impact on the adjoining property than the previously approved plan, and would allow the petitioner to keep the same character for the entire development. He stated that the staff is recommending approval of all three of the requested variances, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Penn asked if there was a fencing requirement between the subject property and the adjoining Ethington property, which is zoned A-U. Mr. Emmons answered that there is no fence requirement for the A-U zone.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations for the zone change, development plan, waiver request, and variances. In addition, after a discussion with the staff, the petitioner understands the staff's reasons for recommending disapproval of the requested waiver for construction of the sidewalk at the end of Syringa Court and is now agreeable to constructing that portion of the sidewalk. Mr. Murphy explained that the petitioner is still requesting a waiver of sidewalk construction along Josie Trace in order to provide a walking trail through the large tree stand in-

---

\* - Denotes date by which Commission must either approve or disapprove request.

stead. The petitioner has consulted with a professional arborist, and learned that providing a sidewalk near those trees, which include a large Gingko and several other significant trees, could disturb the root zones and endanger the health of the trees.

Mr. Murphy stated that Mr. Ethington, the owner of the adjoining agricultural property, had seen the current version of the development plan, and he was agreeable to the zone change and development plan, including the requested waivers. He added that the existing fence along the property boundary is proposed to remain.

Commission Questions: Mr. Brewer stated that, while he applauded the petitioner's effort to save the significant trees, it seemed that constructing townhouses so close to them would have more of an impact on them than constructing a sidewalk. Dave Leonard, Consulting Arborist, stated that he had carefully considered the root zones of the significant trees. He said that there are a couple of trees very near to the location of the proposed townhomes that will need to be removed because they would be severely impacted, but they are not significant trees. Mr. Leonard explained that, using modern practices, the petitioner should be able to completely preserve the root zone of one of the two most significant trees, and only slightly impact the root zone of the other tree.

Zoning Action: A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 9-0 (Berkley and Blanton absent) to approve MARV 2013-3, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 9-0 (Berkley and Blanton absent) to approve the requested variances, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Berkley and Blanton absent) to approve ZDP 2013-15, including the 12 conditions as listed in the revised staff recommendation, approving the requested waiver for sidewalk construction along the proposed Josie Trace.

## **2. ARNOLD PROPERTIES, LLC, ZONING MAP AMENDMENT & ARNOLD PROPERTIES, LLC, ZONING DEVELOPMENT PLAN**

- a. MAR 2013-5: ARNOLD PROPERTIES, LLC (5/5/13)\* - petition for a zone map amendment from a Two Family Residential (R-2) zone to a Planned Neighborhood Residential (R-3) zone, for 0.253 net and gross acre, for property located at 1165 Jones Trail.

### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Medium Density Residential (MD) future land use for the subject property. The petitioner has requested a Planned Neighborhood Residential (R-3) zone in order to construct a multi-family residential structure and associated off-street parking.

The Zoning Committee made **no recommendation** on this request.

The Staff Recommends: **Approval**, for the following reasons:

1. Based on the applicant's revised development pattern and the revised justification, the requested zone change can now be found to be in agreement with the Comprehensive Plan for the following reasons:
  - a. The requested zone change is in agreement with the Goals and Objectives of the 2012 Comprehensive Plan (specifically Goals A.2.a, A.3.b, & D.1.a). The revised development will allow the opportunity for continuity of traffic for pedestrians and automobiles through the yet to be developed properties. It demonstrates that the subject property could reasonably function as a part of the whole should the property to the west and south also redevelop in the future.
  - b. The proposed residential development supports the specific Goals by providing the opportunity for a well designed and connected neighborhood area, in contrast to the original submittal which isolated the subject property to the detriment of future development along Jones Trail.
  - c. The proposed population density for a maximum of 4 dwelling units with a total of 4 bedrooms on this 0.253-acre property would be equivalent to the maximum dwelling unit density allowed in a duplex, which is in agreement with 2007 land use recommendation of Medium Density Residential Land Use at this location.
2. This recommendation is subject to the approval and certification of ZDP 2013-20 Arnold Properties, LLC, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance via conditional zoning, the use of this 0.25-acre property shall be limited to a maximum of four (4) one-bedroom dwelling units.

This use restriction is necessary and appropriate for the subject property to ensure that the proposed zoning will remain in agreement with the population density recommended by the Comprehensive Plan.

---

\* - Denotes date by which Commission must either approve or disapprove request.

- b. ZDP 2013-20: ARNOLD PROPERTIES, LLC (5/5/13)\* - located at 1165 and 1173 Jones Trail.

(Trinity Engineering)

Note: The Planning Commission postponed this plan at their March 28, 2013, meeting. The purpose of this amendment is to add eight residential units and parking.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Remove existing dumpster location.
9. Addition of owner/developer information.
10. Denote construction access location.
11. Clarify open space provided.
12. Denote building height (in feet) and building dimensions (not envelopes).
13. Denote stormwater detention location.
14. Document ability to comply with tree canopy requirements and denote tree preservation plan/tree inventory map, as necessary.
15. Revise note #7.
16. Discuss plan status.
17. Discuss landscaping and screening adjacent to R-2 zones.
18. Discuss proposed access and one-way circulation.

Zoning Presentation: Mr. Emmons began his presentation of the staff's zoning report by entering two items into the record: 1) a copy of the 2012 Comprehensive Plan Goals & Objectives, highlighting the three Goals & Objectives mentioned in the staff report; and 2) an email the staff received in objection to this request. He oriented the Commission to the location of the subject property, which is a quarter of an acre in size, off of Appian Crossing Way, near Appian Way and Armstrong Mill Road. Mr. Emmons noted that, although the subject property has a Jones Trail address, it does not have any frontage on that street. Jones Trail is a narrow rural road that essentially functions as a driveway through an undeveloped piece of property. The subject property is surrounded by R-2 zoning to the south and west; R-3 to the east; and R-1T to the north, for townhouses that are in two-unit groups, similar to duplexes.

Mr. Emmons stated that the 2007 Comprehensive Plan recommends Medium Density Residential use for the subject property and two adjacent undeveloped properties, with a High Density Residential recommendation for the adjoining townhouses. He explained that the petitioner submitted a revised development plan and additional justification for their rezoning request on March 26<sup>th</sup>. Although the changes to the development plan were relatively minor overall, they resulted in significant differences to the proposed development. When this request was first filed, the petitioner was proposing to create an isolated, four-unit apartment building with a residential density of 15.8 dwelling units per net acre. The staff had major concerns with that proposal, due to its lack of connectivity and "neighborhood" characteristics. Mr. Emmons stated that the revised plan, however, was much improved; and the staff now finds that the proposed zone change is in agreement with the recommendations of the Comprehensive Plan, particularly with the 2012 Goals and Objectives.

Mr. Emmons said that, along with their revised plan, the petitioner requested that the staff consider the population density, or number of residents, of the subject property, in addition to the residential density, or number of dwelling units. The subject property is currently zoned R-2, and it could be considered large in size for that zone. Therefore, a very large duplex could be constructed on the property. With a maximum of two dwelling units, with a likely occupancy of two to four residents in each unit, the population density of this ¼-acre property could be four to eight people. Mr. Emmons stated that the petitioner is now proposing four one-bedroom apartments, with a likely occupancy of four to eight residents. Therefore, the population density would likely be similar regardless of whether the property remains zoned R-2, or is rezoned to R-3, as proposed.

Mr. Emmons said that the staff is recommending approval of this request, for the reasons as listed in the revised staff recommendation and on the agenda, including a conditional zoning restriction to limit development on the property to four one-bedroom units.

Commission Question: Ms. Plumlee asked where the required parking spaces for the development are proposed to be located. Mr. Emmons answered that the parking spaces are proposed to be located directly in front of the apartment building.

---

\* - Denotes date by which Commission must either approve or disapprove request.

Development Plan Presentation: Mr. Taylor presented the corollary final development plan, noting that the petitioner is proposing to construct two four-unit structures, with one bedroom per unit. He said that the Subdivision Committee recommended approval of this plan at their meeting three weeks ago. However, in order to satisfy some of the staff's concerns, the petitioner submitted a revised plan that provided an additional access off of the main access easement. That would allow for any future development on the adjoining property to connect to that easement, as well as provide improvements to Jones Trail.

Mr. Taylor stated that the staff had distributed the following revised recommendation, based on the new plan submission:

The Staff Recommends: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
- ~~8. Remove existing dumpster location.~~
- ~~9. Addition of owner/developer information.~~
- ~~10. Denote construction access location.~~
- ~~11. Clarify open space provided.~~
- ~~12. Denote building height (in feet) and building dimensions (not envelopes).~~
- ~~13. Denote stormwater detention location.~~
- ~~8.14.~~ Document ability to comply with tree canopy requirements and denote tree preservation plan/tree inventory map, as necessary.
- ~~15. Revise note #7.~~
- ~~16. Discuss plan status.~~
- ~~9.17.~~ Discuss Addition of a solid fence to the landscaping and screening adjacent to R-2 zones detail information.
- ~~18. Discuss proposed access and one-way circulation.~~
10. Addition of conditional zoning restrictions.

With regard to condition #8, Mr. Taylor said that the petitioner will need to demonstrate that they can meet the minimum tree canopy requirement for the property. Condition #10 refers to the additional landscaping requirement for the property, which is zone-to-zone screening with a minimum six-foot landscape buffer, as the plan currently depicts five feet of landscaping and a solid fence.

Petitioner Representation: Tony Justice, Trinity Engineering, stated that the petitioner is in agreement with the staff's recommendations, including the conditional zoning restriction. He said that the petitioner has worked with the staff to accommodate their concerns, and he requested approval.

Citizen Opposition: Henry Shelby stated that his mother owns the property at 1169 Jones Trail. He said that he believes that the proposed zone change will negatively impact his mother and another elderly lady, who have lived in the Jonestown community for 70 years. Those residents are in their 80s and 90s, and they are concerned about their security and additional traffic in the area. Mr. Shelby asked that the Planning Commission consider disapproving this request, so that his mother and her neighbor can continue to enjoy their properties as they have for decades.

Commission Questions: Ms. Roche-Phillips asked Mr. Shelby to identify the locations of the properties he referenced. Mr. Shelby indicated the location of his mother's home on the aerial photograph, which is adjacent to the subject property.

Mr. Brewer stated that he did not understand why the existing residents are concerned about security. He also asked the staff to address the objector email the staff distributed to the Commission members. Mr. Owens noted that the Jones Trail residents are concerned about the security of their homes, given the possibility of additional residents and traffic on the street.

With regard to Mr. Brewer's question about the objector email, Mr. Emmons answered that the citizen, Doug Woodson, supports the staff's original recommendation of disapproval. He explained that KRS.100 outlines three reasons by which the Planning Commission can grant a zone change request, the first of which is that the request is in agreement with the recommendations of the Comprehensive Plan. With the petitioner's submission of an additional justification and revised development plan, the staff now believes that the requested zone change to R-3 is in agreement with the Comprehensive Plan recommendations, particularly the 2012 Goals & Objectives. Mr. Emmons noted that the petitioner also provided some exhibits depicting a possible development pattern for the other undevel-

---

\* - Denotes date by which Commission must either approve or disapprove request.

oped properties in the immediate vicinity, and how those developments could fit in with their proposed four-unit apartment building. In addition, the staff believed that the revised development plan provided a much improved access and connectivity situation for the subject property and the adjoining undeveloped parcels. He noted that the petitioner had submitted revised findings of approval for this request, and he read those, for the record:

"Although the proposed density of the site exceeds the density recommended in the 2007 Comprehensive Plan, the increased density is appropriate and is in agreement with the adopted 2012 Comprehensive Plan Goals and Objectives. The proposed 4-unit apartment building will contain only single bedroom units which minimizes the increased density. The specific goals which support the proposed development are Goals A.2.a, A.3.b, and D.1.a. The proposed development provides an opportunity for the Infill and Redevelopment of the community while respecting the overall neighborhood's context and design features. The revisions to the development plan for the site, as described above, promote a well-designed community with adequate transportation and pedestrian infrastructure and allows for the efficient extension of this infrastructure through the community. The proposed infrastructure and design features of the site are sufficient to accommodate the proposed increased density."

Ms. Beatty asked Mr. Emmons to compare the first development plan with the revised plan which was received following the Zoning Committee meeting. Mr. Emmons replied that the first plan did not indicate the number of bedrooms proposed for the development, which could have allowed for a doubling of the population density on the property. In addition, there were no possible connections provided between the subject property and adjoining undeveloped parcels. Ms. Beatty asked if the first plan would have required a rezoning to R-3. Mr. Emmons responded that it would have required that the property be rezoned, and he noted that this was not, in fact, an amended request. It was the petitioner's proposed findings and changes to the physical development that reassured the staff that the zone change could be in agreement with the recommendations of the Comprehensive Plan.

Ms. Beatty asked if the two residences to which Mr. Shelby referred were stand-alone, single-family residences, to which he responded affirmatively. Ms. Beatty then asked if Mr. Shelby would also be opposed to a less intense residential development on the property. He responded that he was opposed to any development on the property, not just the proposed development.

Ms. Beatty asked Mr. Emmons specifically what changes were made to the revised development plan to cause the staff to switch their recommendation from disapproval to approval of this request. Mr. Emmons deferred the question to the petitioner. Mr. Justice responded that the first plan included an existing easement at the north end of the property that did not include a paved road or sidewalk connectivity. The plan was altered significantly to add sidewalk connectivity, a 12' paved road, and a relocated access easement in order to allow for ease of future connectivity to the undeveloped adjoining parcels, in case they should ever be developed. The petitioner contends that those changes created a better overall design for the future of the area by addressing neighborhood connectivity.

With regard to the opposition email received from Mr. Woodson, Mr. Justice stated some of his concerns had been addressed via the technical review process for the plan. He added that Mr. Woodson is a lessee of one of the townhouse units near the subject property, which is also owned by the applicant, and he has had prior concerns about overflow parking in the area. The petitioner is addressing that concern on this plan; and, in addition, there are approximately 34 overflow spaces in the existing townhouse development that could also be used by residents of the subject property.

Mr. Wilson stated that, while he understood Mr. Shelby's concerns for the security of his mother and the other elderly resident of Jones Trail, he had personally moved elderly relatives in order for them to be closer to family members. He noted that it might be preferable for those ladies to have more neighbors, and be located closer to a developed area. Mr. Shelby replied that his mother has lived in the area for more than 70 years, and that she prefers to keep it the way it is today.

Petitioner Rebuttal: Mr. Justice stated, with regard to Mr. Shelby's safety concerns, that the petitioner had taken into consideration the existing difficult turnaround on the subject property, and had modified the plan to provide better access for large emergency vehicles.

Ms. Beatty stated that, when the Commission considers rural settlement areas, they must take into account the historic connections of the residents to the area. She said that she understands the need for redevelopment and she believes that the revised development plan is appropriate for the area, but she wanted to go on the record with her concerns about ensuring that the existing rural settlement studies are implemented whenever possible during the redevelopment process.

Ms. Plumlee thanked Mr. Woodson, the email contributor, for his part in the process, since citizen involvement makes for better development.

---

\* - Denotes date by which Commission must either approve or disapprove request.

Ms. Roche-Phillips asked if Jonestown was an identified rural settlement that was included in the Rural Settlements Study. Mr. Emmons answered that, although Jonestown is characteristic of a rural settlement, it was not identified as such in the Rural Settlements Study. Ms. Roche-Phillips asked if there is any national, state, or local recognition for the Jonestown area. Mr. Emmons answered that there are no historic designations for the area, noting that most of it has been redeveloped.

Zoning Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Berkley and Blanton absent) to approve MAR 2013-5, for the reasons provided by staff, and including the conditional zoning restriction as recommended by staff.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Berkley and Blanton absent) to approve ZDP 2013-20, with the 10 conditions as listed in the revised staff recommendation.

#### **4. MICHLER FLORIST, INC., ZONING MAP AMENDMENT & MICHLER FLORIST, INC., ZONING DEVELOPMENT PLAN**

- a. MARV 2013-9: MICHLER FLORIST, INC. (6/2/13)\* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone, for 0.9798 net (1.0774 gross) acres, for property located at 417 East Maxwell Street.

##### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Downtown Mixed Use future land use for the subject property, as it is within the designated Downtown Master Plan (DTMP) Area. This area has an underlying recommendation of Medium Density Residential (MD) use from the 2001 Comprehensive Plan. The petitioner has requested a Neighborhood Business (B-1) zone, with conditional zoning restrictions, in order to allow special events to take place within the building, as well as the future operation of a small café.

The Zoning Committee made **no recommendation** on this request, due to lack of a quorum.

The Staff Recommended: **Approval**, for the following reasons:

1. The requested Neighborhood Business (B-1) zone, if restricted via conditional zoning limitations, is more appropriate than the existing (and unrestricted) R-3 zoning for the subject property, for the following reasons:
    - a. The proposed B-1 zone will allow the existing historic business, in continuous operation on this site since 1903, to operate as a conforming use in the B-1 zone.
    - b. If restricted via conditional zoning, given the existing H-1 Overlay zone for this site and this area, the proposed B-1 zone should not permit a noticeably more intrusive land use than what the long time non-conforming use has allowed.
    - c. A restricted B-1 zone will still allow a small number of additional uses in addition to the existing florist business, and will provide additional off-street parking to accommodate the proposed expansion. Those will complement the existing florist and greenhouses, as well as support the neighborhood.
  2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of neighborhood character preservation, which provide safe and positive social interactions in neighborhoods. The goals and objectives are also supportive of providing incentives to renovate and maintain the historic resources that already enhance a neighborhood's unique identity and image (Goals A.3.a., A.3.b., D.3., D.3.a. and D.3.b.).
  3. This recommendation is made subject to approval and certification of ZDP 2013-31: Michler Florist, Inc., prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. REQUESTED VARIANCES
1. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 0 feet along the western property line.
  2. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 3 feet along 60' of the eastern property line, and to eliminate the requirement for additional fences or hedges.

The Staff will report at the hearing.

- c. ZDP 2013-31: MICHLER FLORIST, INC. (6/2/13)\* - located at 417 East Maxwell Street.  
(Wheat & Ladenburger)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.

---

\* - Denotes date by which Commission must either approve or disapprove request.



6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Denote height of buildings in feet.
8. Denote required landscape buffer adjacent to residential zones.
9. Addition of conditional zoning restrictions.
10. Denote uses and areas (other than greenhouses) to be devoted to B-1 uses.

Zoning Presentation: Mr. Taylor presented the staff's zoning report, briefly orienting the Commission to the location of the subject property on East Maxwell Street, just to the southeast of Arlington Avenue near Transylvania Park. He added that the subject property, which is just under one acre in size, is located within the Aylesford Historic District. Mr. Taylor also noted that the staff had received two items of correspondence in support of this request, which he circulated to the Commission members for their review.

Mr. Taylor stated that the petitioner is proposing to rezone the subject property in order to bring the property into compliance with its longstanding neighborhood business use, to add event space, and to supplement the existing business with a future café. The additional parking required to support those new uses is proposed to be provided via an offsite lease agreement with the owner of the adjacent P-1 property. A pedestrian access is also provided from that parking area to the subject property. The staff believes that the hours of operation of the existing business on the subject property, and the office use on the P-1 property, will complement each other and provide adequate parking availability for both uses.

Mr. Taylor said that the 2007 Comprehensive Plan recommends Downtown Master Plan (DTMP) use for the subject property. The DTMP is intended to provide guidance for redevelopment and the existing land uses in the Master Plan area. That plan identifies the subject property in the Aylesford precinct, and recommends Infill & Redevelopment for that area; it does not, however, include specific recommendations for the type of Infill & Redevelopment. Mr. Taylor stated that the DTMP also recognizes that the subject property is located in a local Historic District, and recommends continued preservation as well as context-sensitive infill in other locations in the district. The staff was not able to find, therefore, that the proposed rezoning was in complete agreement with the recommendations of the Comprehensive Plan and the DTMP. However, with the petitioner's proposed conditional zoning restrictions, the staff does consider the proposed B-1 zone more appropriate than the existing R-3 zone. Rezoning the subject property to B-1 will bring the petitioner's longstanding, historic business use into conformance with the Ordinance, while enhancing their ability to grow the business, as well. The staff also believes that the H-1 zoning will offer additional protection for the historic character of the neighborhood, since proposed changes to the property will require the approval of the Board of Architectural Review. Mr. Taylor stated that the petitioner contends that the proposed conditional zoning restrictions will offer further protection for the neighborhood, by prohibiting potentially disruptive uses. The staff agreed with that contention, and recommended some additional prohibited uses. Mr. Taylor stated that the staff was recommending approval of this request, for the reasons as listed in the staff report and on the agenda, with the addition of the following uses to be prohibited via conditional zoning:

**Prohibited Uses:**

- a. Automobile service station(s)
- b. Tattoo parlors
- c. Miniatures golf courses
- d. Carnivals and Circuses, even on a temporary basis
- e. Drive-through facilities
- f. Research development and testing laboratories or centers
- g. Indoor theaters
- h. Arcades, including pinball and electronic games
- i. Pawn shops
- j. Gasoline pumps
- k. Mining of non-metallic minerals
- l. Funeral Parlors
- m. Hospitals
- n. Medical Offices and clinics
- o. Kindergartens, nursery schools and child care centers for four or more children
- p. Parking lots and structures, other than as an accessory use
- q. Rental of equipment whose retail sale would otherwise be permitted in a B-1 zone
- r. Minor Automobile repair

These restrictions are appropriate and necessary to ensure that any future redevelopment remains compatible in this established, historic residential neighborhood.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that no physical changes are proposed for the subject property. He said that the plan depicts the existing building; parking

---

\* - Denotes date by which Commission must either approve or disapprove request.

area; driveway, which is shared with the petitioner's adjoining residence; and greenhouses and associated structures. Mr. Martin also noted the location of the off-site parking. He stated that the Subdivision Committee recommended approval of this plan, with only basic sign-off conditions and a few "clean-ups" conditions.

Variance Presentation: Mr. Sallee presented the staff's report on the requested variances. He said that the petitioner has requested two variances, both of which are to reduce the required zone-to-zone screening between the R-3 zone and the B-1 zone. Mr. Sallee noted that this report was not presented to the Zoning Committee at their meeting three weeks ago, because the variances had not yet been requested at that time.

Using the rendered development plan, Mr. Sallee indicated the areas requested for variances to the required zone-to-zone screening, along each side of the subject property. The first requested variance is from the corner of one of the existing greenhouses, forward to the building line; the other is along the western property boundary, where the existing driveway is located. Mr. Sallee displayed an aerial photograph of the subject property, and noted that oblique photographs had been distributed to the Commission members, in order to provide a closer view of the area proposed for the variances.

Mr. Sallee said, with regard to the variance requested along the western property boundary, that there is no existing screening in that location. The petitioner resides on the adjoining property, and they have no desire to install the required zone-to-zone screening in that area, as it would obstruct their view of the business property. Mr. Sallee noted that, along the rear of the property, it appears that the existing screening is either compliant or very nearly so. The petitioner has informed the staff that they intend to fully comply with the zone-to-zone screening requirement along that property line. Along the eastern property line, between the greenhouses and the existing parking area, there are a number of existing trees and a mature honeysuckle hedge. Mr. Sallee explained that, although honeysuckle is not an approved species listed in the Planting Manual, the petitioner is requesting a variance in that location to reduce the required landscape buffer to three feet, in order to allow the existing materials to remain. The Zoning Ordinance does allow for a reduction of the landscape buffer from 15 feet to five feet if a solid fence is installed, but the petitioner does not wish to remove the existing plant material in order to install a fence. The existing material straddles the property line in that location, and the adjoining property owner has expressed a wish to the applicant that the honeysuckle be allowed to remain.

Mr. Sallee stated that the requested variances were required to be reviewed by the Landscape Review Committee. That committee did meet to review this item, but did not have a quorum, so no formal recommendation was made. The members that were present reviewed this application thoroughly, and had a discussion about it. The staff incorporated some of the committee's ideas into the staff report on this request, primarily the suggestion that a long-term plan should be made for the removal of the honeysuckle along the eastern property boundary.

Mr. Sallee said that the staff was recommending approval of the requested variances, for the following reasons:

The Staff Recommends: **Approval of the requested landscape variances**, for the following reasons:

- a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because no physical change or expansion of the existing buildings or parking lot is proposed by the applicant, and because it would be difficult to locate additional fences or hedges along these property lines due to the location and layout of existing driveways, parking spaces, trees and hedges.
- b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because the florist business and greenhouses predate the Ordinance, and there is a well-established landscape screen in place along the parking lot to the rear of the property.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the house on the adjoining lot to the west is owned and occupied by the owners of the florist business. The ability to retain the existing trees and shrubs will continue a mature landscape screening along the eastern property line.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship to the applicant because of the limited space available for the required plantings, exclusive of existing paved areas, that have been at this location for decades, and since some of the new screening would be redundant.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant, as the current land use is a legal non-conforming use of the property, now located in a designated local historic district, which has been substantially screened from neighboring properties for many years.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has

---

\* - Denotes date by which Commission must either approve or disapprove request.

approved for this property (under Article 6-4(c) of the Zoning Ordinance).

4. Prior to obtaining any new Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.

Commission Questions: Ms. Mundy asked if the Commission should add a further condition to require the removal of the honeysuckle along the eastern property boundary. Mr. Sallee answered that the Commission could choose to do so; however, it could affect the timing of the development plan, which would need to be certified within the next two weeks. He said that the discussion at the Landscape Review Committee was more long-term, in terms of the next several years. He suggested that the Commission members listen to the petitioner's presentation, see what their plans are for removal of the honeysuckle, and then decide whether to make an additional requirement based on that information.

Ms. Plumlee said that she would like to see the honeysuckle removed as soon as possible.

Ms. Beatty asked how the proposed rezoning would affect the existing Historic District. Mr. Sallee answered that the H-1 zoning will remain unchanged, no matter the underlying zone, and many changes to the property will still be required to be approved by the Board of Architectural Review. He said that the rezoning of the property would allow additional uses on the property; but all external changes would require not only the approval of the BOAR, but the Planning Commission's approval of an amended development plan for the property.

Mr. Owens said that the Subdivision Committee members discussed the off-site parking at their meeting three weeks ago, and he wondered if the Commission should include a requirement for the parking agreement in the conditions for approval of this plan. Mr. Sallee answered that that parking lot, which is associated with an office building on High Street, was designed to be used for the new activities on the subject property. He added that, prior to certification of the development plan, the petitioner will need to document on the plan the number of spaces in that lot to be applied to uses on the subject property. Mr. Sallee added that no additional condition is needed, because the development plan identifies 17 parking spaces on the adjoining property.

Mr. Penn asked, if the Commission grants this rezoning request, and the subject property is later sold, the Commission would see a revised development plan. Mr. Sallee answered that this is a final development plan; so it is possible that, if no changes were proposed for the property, it could change ownership without further development plan review by the Commission.

Ms. Roche-Phillips asked if there is an existing parking lot near the front of the property as well. Mr. Sallee answered that there is an existing parking lot near the front of the property, which is shown on the development plan and can accommodate seven vehicles.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner, which he considers "one of the iconic family businesses in Lexington," as the company has existed in its present location for 110 years. The current owners represent the fourth and fifth generations of the Michler family. Mr. Murphy stated that, given the company's history at this location, the petitioner has no intention of selling the property and relocating; rather, they hope to introduce the younger generation of Lexington residents to their florist business by hosting receptions, weddings, and other similar functions on their property. In addition, it is difficult to operate a thriving florist business and greenhouse on such a small property, so the petitioner supplements their business by growing some plants and shrubs on a farm in a rural area of Lexington-Fayette County. They intend to use the revenue received from the new uses on the subject property to restore and upgrade the existing greenhouses located there.

Mr. Murphy stated that John and Claudia Michler live next door to the subject property, at 415 East Maxwell Street, in a residence which was constructed in 1906. They intend to continue to reside on that property, which they believe serves as a buffer from the business uses for the residents to the west side of the subject property.

Mr. Murphy said that, in reviewing the 2007 Comprehensive Plan, 2012 Comprehensive Plan Goals & Objectives, and the Downtown Master Plan, he found three common themes that the petitioner contends are supported by the proposed zone change: promotion of neighborhood interaction; promotion of tourism; and preservation and enhancement of historic and family-owned businesses. The subject property will remain in the existing H-1 zone, wherein review by the BOAR will serve to protect the historic character of the area from any possible inappropriate updates to the subject property.

With regard to Mr. Penn's question about the possible sale of the subject property, Mr. Murphy stated that the petitioner has no intent to sell. He explained that, should the property be sold, the same use and development plan could be continued without the approval of the Planning Commission. Any proposal to change the use or the structures on the property would require the Commission's approval of an amended development plan.

---

\* - Denotes date by which Commission must either approve or disapprove request.

Mr. Murphy said, with regard to the proposed new uses on the property, that the petitioner intends to expand slowly initially, beginning with adding weddings and receptions, and could possibly add a café in the future. The front portion of the property, which is visible from East Maxwell Street, will remain as it currently exists, and no changes are proposed to the parking area or greenhouses. All of the reception activity is proposed to take place at the rear of the property, with parking leased from an office building on High Street, to which pedestrian access is already provided.

Mr. Murphy stated that the petitioner is requesting two variances in order to prevent the construction of a fence or landscape buffer all the way around the property, which would require the removal of the driveway. The petitioner intends to meet all of the tree canopy and landscaping requirements, with the exception of the areas requested for variances and the honeysuckle, which the adjoining property owner (who is the petitioner's daughter) wishes to leave intact. Mr. Murphy noted that the petitioner does have a five-to-six-year plan to remove the honeysuckle and replace it with approved plant materials.

Mr. Murphy stated that the Aylesford Neighborhood Association submitted a letter in support of this request, copies of which had been distributed to the Commission members. He noted that the petitioner is in agreement with all of the staff recommendations, including the recommended conditional zoning restrictions, and he requested approval.

Citizen Support: Bill Wassmer, owner of several properties in the area, including one adjoining property, stated that he supports the proposed rezoning to B-1. He said he believes that it is impressive that, in the current economic climate, less than one acre of commercial property can support two families. Mr. Wassmer does not believe that the proposed rezoning will have a negative impact on the surrounding neighborhood, and he believed that the Planning Commission should recommend approval of this request.

Citizen Opposition: Martha Birchfield, 320 Linden Walk, stated that her home is the iconic house for the Aylesford neighborhood. It was the original location of St. Joseph Hospital, and it was built before Michler Florist located on East Maxwell.

Ms. Birchfield stated that she has lived around the corner from the petitioner's property for 28 years and has been a steady customer of their business, but she would like for the use and zoning of the property to remain as they currently exist. She said that she believes that rezoning the property to B-1 could negatively impact property values in the area, and have a "domino effect on the neighborhood," particularly if the subject property should be sold. In addition, Ms. Birchfield is concerned that the development plan does not depict any possible future changes to the property, and she would be more comfortable if the petitioner provided more specifics about the future of the business.

Commission Question: Mr. Owens asked if any major changes to the subject property would require Commission approval of an amended development plan. Mr. Saltee answered that internal changes to the existing buildings might not require a development plan amendment; but any changes requiring additional ground area, such as the construction of restrooms, could require a revised development plan, as could possible changes to the use of the existing greenhouses.

Commission Comments: Mr. Wilson stated that he appreciated the historic character of the subject property, and added that he also appreciated the polite and eloquent manner in which Ms. Birchfield presented her opposing remarks.

Zoning Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve MARV 2013-9, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve the requested variances, for the reasons provided by staff, subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve ZDP 2013-21, subject to the 10 conditions as listed on the agenda.

VI. **COMMISSION ITEMS** – No such items were presented.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

---

\* - Denotes date by which Commission must either approve or disapprove request.

IX. MEETING DATES FOR MAY, 2013

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 2, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	May 2, 2013
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>May 9, 2013</b>
Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	May 16, 2013
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>May 23, 2013</b>
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 29, 2013
Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	May 30, 2013

X. ADJOURNMENT – There being no further business, Chairman Owens declared the meeting adjourned at 4:02 p.m.

TLW/TM/CT/BJR/BS/src

\* - Denotes date by which Commission must either approve or disapprove request.